

Application No. 10/612,558  
Amendment dated December 22, 2004  
Reply to Office Action of 09/22/04  
Attorney Docket No. 03-12746

**Amendments to the Drawings:**

Applicant submits herewith three (3) replacement sheets for Figures 4-6 as Appendix A. The replacement sheets incorporate the drawing changes suggested by the Examiner and are believed to comply with 37 CFR 1.84.

## **REMARKS/ARGUMENTS**

Applicant has studied the Office Action of September 22, 2004 and made amendments to the title, specification, drawings and claims, as indicated hereinabove, to place the application in condition for allowance. No new matter has been added.

Claims 1 - 9, and 15 - 17 have been cancelled. Claims 10 - 14 have been amended to define Applicant's invention over the cited prior art. No new claims have been added. Therefore, claims 10 - 14, inclusive, are presently pending.

### **Claim Objections**

Claim 5 has been objected to because of minor informalities. Claim 5 has been cancelled rendering the Examiner's objections thereto moot.

### **Drawing Objections**

The drawings have been objected to because of various informalities. Applicant has corrected Figs. 4 - 6, as suggested by the Examiner. Replacement sheets for Figs. 4 - 6 are attached herewith for review by the Examiner.

### **Claim Rejections Under 35 U.S.C. §102**

Claims 1 - 2, 4 - 8 and 10 - 17 stand rejected under 35 U.S.C. §102(e) as being anticipated by Gank (US 6,647,684). Gank is directed to an elongated frame element 20 having a top surface 23 and being attached at opposing first and second terminating

ends 26, 27 to another identical frame element. Each first terminating end 26 of element 20 is connectable to a second terminating end 27 of an adjacent element 20 within a square-shaped frame unit 10. First terminating end 26 defines a mated recess 25 that is sized to accept a dowel pin 24 located on and affixed to one side of second terminating end 27. Each frame element 20 has elongated extensions 21 on opposite sides serving as blind nailers. Each extension 21 has a vertical surface 29, and terminates at both ends in a taper cut 22 that aligns with the angle of first and second terminating ends 26, 27.

The Examiner asserts that Gank anticipates Applicant's claimed invention by disclosing a support rail (extension) 21, first and second borders (top surfaces) 23 being at a right angle to one another with the first and second ends of borders 23 being connected by way of connector (dowel pin) 24 and corresponding connector (mated recess) 25. There is also a fascia (first terminating end) 26 between the first and second borders that is extended to a tapered line beyond the support rail, and a ledge (at 29) along the first border that is lower than the border. The first connector is compatible with a cross-tie, and the border is a raised surface along the support rail.

Applicant respectfully submits that the claimed invention is patentably different from the setup of Gank. Specifically, there is no teaching in Gank in regard to at least one substantially L-shaped ledge being adapted to run along a border, whereby the substantially L-shaped ledge is lower in elevation than the border, as recited in amended claims 10 - 12.

Gank teaches a rectangular blind nailer/extension 21 (Fig. 5) having a vertical surface 29 at one end. The “blind nailers 21 of the completed frame unit together form a tile supporting ledge 41 upon which the tile rests when properly positioned” (Col. 3, lines 21 – 23). Tile supporting ledge 41 has a substantially flat configuration, as illustrated in Figs. 3 and 5, which is needed to allow proper positioning of a tile thereon. Particularly, tile 11 (Fig. 5) “is positioned on top of the blind nailers 21 between the elements 20 of a unit 10” (Col. 3, lines 33 – 35).

Clearly, neither ledge 41 nor blind nailer/extension 21 of Gank has a substantially L-shaped configuration, as claimed by Applicant. Gank teaches away from the claimed invention by reciting a substantially flat instead of substantially L-shaped ledge configuration.

Furthermore, there is no teaching in Gank in regard to at least one substantially tapered fascia extension that includes on one side a receptacle connector of a substantially triangular configuration, as recited in amended claims 13 – 14.

Gank teaches a substantially circular mated recess 25 (Figs. 1 - 2) “that is sized to accept a dowel pin 24” (Col. 2, lines 37 – 38). The “dowel pin and mated recess type fitting is preferred” (Col. 2, lines 54 – 55). Gank teaches away from the claimed invention by reciting a preferred substantially circular receptacle connector, instead of a substantially triangular receptacle connector, as claimed by Applicant.

Since the Gank reference does not anticipate in any way the invention, as recited in amended claims 10 – 14, Applicant respectfully requests withdrawal of the 102(e)

claim rejections in regard to those claims. Claims 1 – 2, 4 – 8 and 15 – 17 have been canceled rendering the Examiner's rejections thereto moot.

Claims 1 – 3 and 9 – 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by Koch (DE 4113195). Koch is directed to profile bars 10 having hollow profile and being connected by union pieces. The union pieces are inserted and fixed in the interior of each hollow profile. Profile bars 10 have support fillets 29 on two of their long sides, and are aligned with a lower side. Support fillets 29 have location surfaces 31 for the positioning of surface components 12. Location surfaces 31 have L-shaped fillets clipped on to them enabling side surfaces 38 of the profile bars to be set upright.

The Examiner asserts that Koch anticipates Applicant's claimed invention by disclosing a support rail 29, first and second borders (near 38) that are substantially orthogonal to each other, a cross tie 11 that is connecting the first end of the first border to the first end of the second border, and a ledge that has a raised surface 31.

Applicant respectfully submits that the claimed invention is patentably different from the setup of Koch. Specifically, there is no teaching in Koch in regard to at least one substantially tapered fascia extension projecting beyond at least one substantially L-shaped ledge, as recited in amended claims 10 – 11. In fact, Koch teaches no fascia extension at all. Particularly, each side surface 38 terminates abruptly at the end of L-shaped ledge 29, as clearly shown in Fig. 1. Consequently, Koch teaches away from the claimed invention by failing to recite at least one substantially tapered fascia extension that projects beyond a substantially L-shaped ledge, as claimed by Applicant.

Applicant respectfully submits that for a reference, such as Koch, to function under 35 U.S.C. §102(b), the reference must within the four corners of that document disclose each and every element that is set forth in the claim against which it is applied. Furthermore, every element of the claimed invention, as recited in the claims, must be disclosed either specifically or inherently by a single prior art reference. See *Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed.Cir.1992); *Scripps*, 927 F.2d at 1576-77; *Lindemann Maschinenfabrik GMBH, v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed.Cir.1984).

Since the Koch reference does not anticipate in any way the invention, as recited in amended claims 10 – 11, Applicant respectfully requests withdrawal of the 102(b) claim rejections in regard to those claims. Claims 1 – 3 and 9 have been canceled rendering the Examiner's rejections thereto moot.

### Conclusion

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. Applicant believes that the application, as amended, is in condition for allowance. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the telephone number listed herein below to discuss any steps necessary for placing the application in condition for allowance.

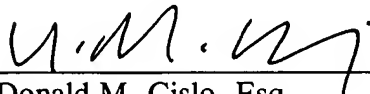
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In the event that any fees are due, the Examiner is authorized to charge our  
USPTO Deposit Account # 03-2030. A duplicate of this authorization is enclosed.

Respectfully submitted,

CISLO & THOMAS LLP

Date: December 22, 2004

  
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DMC/MM/cjh

Enclosures:

Replacement Drawings  
Acknowledgement Postcard

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